99TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
99-502

PROVIDING FOR THE USE AND DISTRIBUTION OF FUNDS APPROPRIATED IN SATISFACTION OF JUDGMENTS AWARDED TO THE SAGINAW CHIPPEWA TRIBE OF MICHIGAN IN DOCKETS NUMBERED 57, 59, AND 13E OF THE INDIAN CLAIMS COMMISSION AND DOCKET NUMBERED 13F OF THE UNITED STATES CLAIMS COURT, AND FOR OTHER PURPOSES

MARCH 20, 1986.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. UDALL, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany S. 1106]

[Including the cost estimate of the Congressional Budget Office]

The Committee on Interior and Insular Affairs, to whom was referred the bill (S. 1106) to provide for the use and distribution of funds appropriated in satisfaction of judgments awarded to the Saginaw Chippewa Tribe of Michigan in dockets numbered 57, 59, and 13E of the Indian Claims Commission and docket numbered 13F of the United States Claims Court, and for other purposes having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 1, line 3, strike all after the enacting clause and insert the following in lieu thereof:

SHORT TITLE; DEFINITIONS

SEC. 1. (a) This Act may be cited as the "Saginaw Chippewa Indian Tribe of Michigan Distribution of Judgment Funds Act".

(b) For purposes of this Act—

(1) The term "tribe" means the Saginaw Chippewa Indian Tribe of Michigan.

(2) The term "Tribal Council" means the Saginaw Chippewa Tribal Council.

(3) The term "Secretary" means the Secretary of the Interior.

ABROGATION OF PRIOR PLAN

SEC. 2. Notwithstanding Public Law 93-134 (25 U.S.C. 1401 et seq.) or any plan prepared or regulation promulgated by the Secretary pursuant to such law—

(1) the funds appropriated in satisfaction of judgments awarded the tribe in dockets numbered 59 and 13E of the Indian Claims Commission, and

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(2) the balance of any undistributed funds appropriated in satisfaction of the judgments awarded the tribe in docket numbered 57 of the Indian Claims Commission and docket numbered 13F of the United States Claims Court,

and any interest or investment income accrued on the amount of such funds on or before the date of any transfer made pursuant to section 5 or 8 (less any attorneys' fees and court costs), shall be distributed and used in accordance with the provisions of this Act.

INVESTMENT FUND

SEC. 3. (a)(1) The tribe, through the Tribal Council, shall establish a trust fund for the benefit of the tribe which shall be known as the "Investment Fund". The principal of the Investment Fund shall consist of—

(A) the funds transferred by the Secretary to the Tribal Council pursuant to section 5(a),

(B) the amounts required to be included in principal under subsection (c) of section 8(c),

(C) such portion of the funds paid to the Tribal Council under section 8(a) as the Tribal Council may elect to add to the principal, and

(D) such other amounts of the income of the Investment Fund which the Tribal Council may elect to retain and add to the principal.

(2) The Tribal Council shall be the trustee of the Investment Fund and shall administer the Investment Fund in accordance with the provisions of this Act.

(b)(1) The principal of the Investment Fund shall be used exclusively for investments or expenditures which the Tribal Councils determines—

(A) are reasonably related to—

(i) economic development beneficial to the tribe, or

(ii) the development of tribal resources, or

(B) are otherwise financially beneficial to the tribe.

(2) Under no circumstances shall any part of the principal of the Investment Fund be distributed in the form of per capita payments to the members of the tribe or used or expended for purposes other than investment or economic development projects and programs.

(3) None of the income of the Investment Fund may be distributed or expended before the date that is 18 months after the date on which the amendments to the constitution of the tribe referred to in section 4(a) are adopted and ratified by the qualified voting members of the tribe (within the meaning of such constitution).

(c) at least 10 percent of the income earned on the Investment Fund during each of the first ten fiscal years of the Investment Fund beginning after such Investment Fund is established shall be retained in the Investment Fund and become part of the principal of the Investment Fund.

(d)(1) The Investment Fund shall be maintained as a separate account.

(2) The books and records of the Investment Fund shall be audited at least once during each fiscal year of the Investment Fund (or before the end of the 3-month period beginning on the last day of such fiscal year) by an independent certified public accounting firm which shall prepare a report on the results of such audit. Such report shall be treated as a public document of the tribe and a copy of the report shall be available for inspection by any enrolled member of the tribe.

TRIBAL CONSTITUTION

SEC. 4. (a) Notwithstanding any other provision of law, the Tribal Council may call a tribal election and, pursuant to such election, the tribe may adopt (without the approval of the Secretary) any amendments to the constitution of the tribe which were approved by the Tribal Council on April 15, 1985, in resolution L and O-16-85.

(b) Any amendments to the constitution of the tribe other than the amendments referred to in subsection (a) may only be adopted in accordance with the provisions of such constitution and applicable Federal law and may not be adopted before the date that is 18 months after the date on which the amendments referred to in subsection (a) are adopted and ratified by the qualified voting members of the tribe.

(c) The adoption of any amendment referred to in subsection (a) to the constitution of the tribe shall take effect when such amendment is ratified by the qualified voting members of the tribe (within the meaning of such constitution).

(d) The tribe shall submit to the Secretary a copy of any amendment to the constitution of the tribe referred to in subsection (a) within 30 days after the date on which such amendment is ratified by the qualified voting members of the tribe (within the meaning of such constitution).

TRANSFER OF FUNDS BY THE SECRETARY

SEC. 5. (a) The Secretary shall transfer the funds described in section 2 (which have not previously been transferred to the Tribal Council under section 8(a)) to the Tribal Council by no later than the date that is 60 days after the date on which the Secretary receives written notice of the adoption by the Tribal Council (in accordance with the constitution and bylaws of the tribe) of a resolution requesting the Secretary to make the transfer under this subsection if the amendments to the constitution of the tribe referred to in section 4(a) are adopted and ratified by the qualified voting members of the tribe (within the meaning of such constitution).

(b)(1) Notwithstanding any other provision of law, the approval of the Secretary for any payment or distribution from the principal or income of the Investment Fund, after the transfer of funds pursuant to subsection (a), shall not be required and the Secretary shall have no trust responsibility for the investment, supervision, administration, or expenditure of the principal or income of the Investment Fund.

(2) The Secretary may take such action as the Secretary may determine to be necessary and appropriate to enforce the requirements of this Act. After notice and hearing, the Secretary may take such action as the Secretary may determine to be necessary and appropriate to assume administration of the Investment Fund if it is determined that the Tribal Council has materially failed to administer the Investment Fund in accordance with the requirements of this Act. The Secretary shall provide whatever assistance may be necessary to the Tribal Council to correct any such deficiencies prior to any proposed Secretarial assumption of the administration of the Investment Fund and immediately thereafter, if necessary. The Secretary's assumption of the administration of the Investment Fund shall not exceed a period of 6 months.

TREATMENT OF AMOUNTS PAID OR DISTRIBUTED FROM THE INVESTMENT FUND

SEC. 6. (a) No amount of any payment or distribution—

(1) from the principal or income of the Investment Fund, or

(2) of any funds transferred to the Tribal Council under section 5(a)

to any payee or distributee who is an enrolled member of the tribe shall be included in the gross income of the payee or distributee for purposes of any Federal, State, or local income tax.

(b) Any payments or distributions described in subsection (a), and the availability of any amount for such payments or distributions, shall not be considered as income or resources or otherwise used as the basis for denying or reducing—

(1) any financial assistance or other benefit under the Social Security Act—

(A) to which any enrolled member of the tribe, or the household of any such member, is otherwise entitled, or

(B) for which such member or household is otherwise eligible, or

(2) any other—

(A) Federal financial assistance,

(B) Federal benefit, or

(C) benefit under any program funded in whole or in part by the Federal Government

to which such member or household is otherwise entitled or for which such member or household is otherwise eligible.

WAIVERS OF SOVEREIGN IMMUNITY

SEC. 7. Notwithstanding any other provision of law, the tribe may execute limited waivers of the sovereign immunity of the tribe and consent to the civil jurisdiction of the courts of the State of Michigan with regard to the use as security for indebtedness of—

(1) any amount of income of the Investment Fund which is not retained and added to the principal of the Investment Fund pursuant to subsection (a)(1)(D) or (c) of section 3,

(2) a portion of the principal of the Investment Fund equal to the total amount, if any, of the funds transferred to the Tribal Council under section 5(a) that are added to the principal of the Investment Fund,

(3) any funds transferred to the Tribal Council under section 5(a) that are not added to the principal of the Investment Fund and any interest or investment income accrued on such funds, or

(4) any asset acquired by use of the income described in paragraph (1), or of the funds described in paragraph (3), which is not held in trust by the Secretary for the benefit of the tribe.

if such waivers of sovereign immunity do not exceed individually or collectively the total amount or value of such security and such waivers specifically identify and limit the parties who have been granted the authority to bring an action against the tribe pursuant to such waiver.

OPTIONAL USE OF DOCKET 57 FUNDS

SEC. 8. The Secretary shall transfer to the Tribal Council all or any portion of the undistributed funds appropriated in satisfaction of the judgment awarded the tribe in docket 57 of the Indian Claims Commission (including all interest and investment income accrued on such funds) which the tribe requests the Secretary to transfer under this subsection. Such transfer shall be made by no later than the date that is 60 days after the date on which the Secretary receives written notice of the adoption of a resolution by the Tribal Council (in accordance with the Constitution and bylaws of the tribe) requesting a transfer of funds under this subsection.

(b) Any funds transferred to the Tribal Council under subsection (a) shall be subject to the same accounting and auditing requirements applicable to the Investment Funds under section 3(d).

(c) At least 10 percent of the interest or investment income, if any, that accrues during each year of the 10-year period beginning on the date any transfer is made under subsection (a) on any funds held by, or on behalf of, the tribe which were transferred to the Tribal Council under subsection (a) shall be transferred to the Investment Fund and become part of the principal of the Investment Fund.

NONDISCRIMINATION

SEC. 9. (a) Any distribution or expenditure or the income of the Investment Fund, and any program or activity funded, in whole or in part, by the principal or income of the Investment Fund, shall not discriminate against—

(1) individuals who become members of the tribe after the date on which the amendments to the constitution of the tribe referred to in section 4(a) are adopted and ratified by the qualified voting members of the tribe (within the meaning of such constitution), or

(2) members of the tribe who do not reside on the reservation of the tribe.

(b) Any—

(1) expenditure for any improvement on the reservation of the tribe that can be enjoyed by all members of the tribe, or

(2) program or activity conducted only on the reservation of the tribe in which any member of the tribe can participate,

shall not be construed to be discriminatory for purposes of subsection (a) merely because the benefits of such improvement, program, or activity are more readily available to members of the tribe who reside on the reservation of the tribe. 6

PURPOSE

The purpose of S. 1106 is to provide for the use and distribution of funds awarded to the Saginaw, Swan Creek and Black River Bands of Chippewa Indians by the Indian Claims Commission in Dockets No. 59 and 13E and by the Court of Claims in Docket No. 13F.

BACKGROUND

In 1978 and 1979, the Indian Claims Commission awarded some funds to the Saginaw, Swan Creek and Black River Chippewas as compensation for land in Michigan and Ohio ceded to the United States under three treaties entered in 1805, 1807 and 1817. Interests are accumulating and the funds awarded now total in excess of $7 million.

S. 1106 proposes to transfer all of these funds to the Saginaw Chippewa Tribe of Michigan. This tribe, which is the only modern day tribal entity that is a successor to the three historical bands, organized in 1937 under the provisions of the Indian Reorganization Act of 1934. Although the United States did at one time enter

into treaties with the three bands separately, by treaty of August 2, 1855, the Swan Creek and Black River tribal members who had not removed west were joined to the Saginaw Chippewas and a reservation was set aside for the tribe.

The membership of the Tribe which presently approximates 900 members includes all persons named on certain allotment rolls in 1883, 1885 and 1891 and their descendants who are at least one-quarter degree Indian blood and born to a member who was a resident of the reservation at the time of the birth of such descendant.

Under the provisions of S. 1106, the tribe would have to amend its membership requirements so as to provide that all descendants of persons on certain allotment rolls be eligible for membership regardless of whether they were born of members residing on the reservation at the time of their birth.

The Committee notes that a previous award of the Indian Claims Commission in Docket No. 57, totalling about $16.7 million was distributed mostly per capita and included individuals who although not tribal members, are nevertheless descendants of Indians who once had membership in one of the three bands. This present award does not propose any per capita distribution and in transferring the funds to the Tribe, in effect restricts any potential benefits from the award to tribal members. At the time of the distribution of the funds under Docket No. 57, the Tribe had some stringent membership requirements which prevented individuals with a substantial degree of Indian blood and who would otherwise qualify for tribal membership from becoming members of the tribe just because their parents, at the time of their birth, did not reside on the reservation. There was therefore arguably a legitimate reason to provide a per capita share since these people were denied tribal membership on a technical reason which may not have been fair. However, this bill provides that the funds will not be transferred to the tribe unless the tribe agrees to make all descendants meeting the quarter blood degree requirement eligible for membership. Thus there is no reason to continue to issue per capita shares to individuals who, even though they may be descendants of an Indian ancestor, are in fact less than quarter blood Indian and are not members of any Indian Tribe and therefore are not considered "Indian" under the laws of the United States.

SECTION-BY-SECTION ANALYSIS

Section 1 cites this Act as the "Saginaw Chippewa Indian Tribe of Michigan Distribution of Judgment Funds Act" and provides the definitions of certain terms used in this Act.

Section 2 provides that, notwithstanding Public Law 93-134 or any plan and regulations prepared pursuant to this law, funds appropriated in satisfaction of judgments awarded to the tribe in docket No. 59 and 13E of the Indian Claims Commission and the balance of any undistributed funds awarded the tribe in dockets 13F and 57 shall be used and distributed in accordance with the provisions of this Act.

Section 3 requires the establishment of a fund to be known as the "Investment Fund," the principal of which shall consist of the funds transferred by the Secretary to the Tribal Council pursuant

to section 5(a); the amounts required to be included under subsection (c) or section 8(c), and such amounts of the income of the investment Fund which the Tribal Council may elect to retain and add to the principal. This section further authorizes the Fund to be held in trust by the Tribal Council for the benefit of the tribe and administered in accordance with this Act; no part of the principal of the Investment Fund may be distributed in the form of per capita payments to the members of the tribe or used or expended for purposes other than investment or economic development projects or programs. This section also provides that during the first 10 years after the beginning of the Investment Fund, at least 10 percent of the income earned on the Investment Fund is to be retained in the fund and added to the principal of the fund. No part of the income of the Investment Fund is to be distributed and expended before 18 months after the tribe adopts and ratifies the amendments of the tribal constitution referred to in section 4.

Section 4 allows the Tribal Council to call a tribal election and pursuant to such election, the tribe may adopt, without the approval of the Secretary, any amendments to the constitution of the tribe which were approved by the Tribal Council on April 15, 1985, in resolution L and O–03–85. The proposed amendments to the constitution of the Saginaw Chippewa Tribe provide among other things for expansion of the membership of the tribe to include persons born off the reservation who are of Saginaw Chippewa Indian descent and are at least ¼ Indian blood. The amendments will also restructure the present tribal council to provide an additional council member from the Saganing district and any additional council members for membership living outside the reservation and not within the Saganing district. The majority of the council will continue to be composed of persons elected from the Isabella reservation district.

Section 5 provides that the Secretary shall transfer funds to the Tribal Council for deposit in the Fund before the end of the sixty-day period beginning on the date the Secretary receives notice of the adoption of a resolution by the Tribe which would establish the Fund. Before such transfer can occur, the amendments to the constitution of the tribe referred to in section 4(a) must be adopted and ratified by the qualifying voting members of the tribe. Additionally, the section provides that the approval of the Secretary for any payment or distribution from the principal or income of the Investment Fund, after the transfer of funds pursuant to subsection (a), shall not be required and the Secretary shall have no trust responsibility for the investment, supervision, administration, or expenditure of the principal or income of the Investment Fund. The Secretary is authorized to take whatever action is appropriate and necessary to enforce the requirements of this Act and may take over administration of such Fund if it is determined that the Tribal Council has failed to administer the fund in accordance with this Act.

Section 6 provides that any payment or distribution from the Fund in accordance with section 3 shall not be included in the gross income of the payee or distributee where the payee or distributee is an enrolled member of the Tribe, for purposes of any Federal or State income tax. Likewise, payments or distributions from the Fund, or the availability of any amount for payment or distri-

bution from the Fund, may not be considered as income or resources as a basis for denying or reducing assistance under the Social Security Act, or any other Federal financial assistance program.

Section 7 provides that the tribe may execute limited waivers of sovereign immunity of the tribe and consent to the civil jurisdiction of the courts of the state of Michigan with regard to the use of security for indebtedness of certain portions of the investment Fund. The section specifies the funds that can be used as security and the conditions under which sovereign immunity can be waived.

Section 8 provides that the Secretary shall transfer to the Tribal Council all or any portion of the undistributed funds appropriated in satisfaction of the judgment awarded the tribe in docket 57 of the Indian Claims Commission and that such funds will be subject to the same restrictions and conditions applicable to the Investment Fund.

Section 9 clarifies that any distribution or expenditure of the income of the Investment Fund, and any program or activity funded, in whole or in part, by the principal or income of the Imvestment Fund, shall not discriminate against individuals who become members of the tribe pursuant to the amendments to the tribal constitution or members of the tribe who do not reside on the reservation of the tribe. In addition, any expenditure for any improvment on the reservation of the tribe that can be enjoyed by all members of the tribe, or any program or activity conducted only on the reservation in which any member of the tribe can participate, is not to be discriminatory for purposes of the Act merely because the benefits of such improvement, program, or activity are more available and accessible to members of the tribe who do reside on the reservation of the tribe.

COMMITTEE AMENDMENT

The Committee by voice vote, adopted an amendment in the nature of a substitute, the substitute corrects a typographical mistake which was made in the printing of the bill and adds some additional language to sections 4(b) and 5(b)(2). Section (4)(b) was amended so as to make sure that any other amendments to the tribal constitution other than those referred to in section 4(a) shall not be adopted until at least 18 months after the date of adoption of the amendments referred to in section 4(a). This amendment would allow the new members of the tribe to register and obtain their tribal membership before any further changes are made to the tribal Constitution. Since under the revised tribal Constitution, new members living outside the reservation would constitute a separate district and since under such Constitution, any new amendment to the Constitution has to be agreed to by a vote of majority of the votes in each of the three districts, the amendment to the bill in effect would require that a majority of the new members agree to any further amendment to the Constitution (other than of course the amendments called for in section 4(a)).

Section 5(b)(2) was amended so as to allow the Secretary of the Interior to take such action as he deems appropriate to assume the adminitration for the Investment Fund if he determines that the

Tribal Council has materially failed to administer the Investment Fund in accordance with the requirements of this Act. Under the amendment, the Secretary shall provide assistance if necessary to the Council, before assuming such administration or if the failure to comply with this Act is a result of a lack of technical capability on the part of the tribe. If however the failure to comply is the result of willful actions or omissions, or if the failure to comply cannot be cured by Departmental assistance, the Secretary under this amendment can take over administration of the fund directly. Although the amendment specifies that the Secretary cannot assume administration of the Fund for a period exceeding 6 months, the Secretary is not limited to one 6 months period. Therefore if after surrendering the administration of the Fund to the tribe, violations of this Act continue to occur, the Secretary may again reassume the administration of such Fund. In other words, although the Secretary cannot take over administration of the fund for more than 6 months at a time, he is not limited to only one such 6-month period.

COST AND BUDGET ACT COMPLIANCE

Enactment of this bill would result in no additional cost to the United States. The cost anaylsis prepared by the Congressional Budget office, which the committee adopts as its own, follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 23, 1985.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1106, the Saginaw Chippewa Indian Tribe of Michigan Distribution of Judgment Funds Act, as ordered reported by the House Committee on Interior and Insular Affairs, October 23, 1985.

We expect that no additional costs to the federal government or to state or local governments would be incurred as the result of enactment of this legislation. The bill would specify the manner of the use and distribution of funds previously awarded to the tribe.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

RUDOLPH G. PENNER.

INFLATIONARY IMPACT STATEMENT

Enactment of S. 1106 will have no inflationary impact.

OVERSIGHT STATEMENT

No specific oversight activities were undertaken by the Committee and no recommendations were submitted to the Committee pursuant to rule X, clause 2(b) 2.

COMMITTEE RECOMMENDATION

The Committee on Interior and Insular Affairs, by voice vote, recommends approval of this bill by the House of Representatives.

EXECUTIVE COMMUNICATION

The current views of the Department of the Interior, endorsing S. 1106, dated February 28, 1986, are set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, February 28, 1986.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This is provide you with our additional views on S. 1106, the "Saginaw Chippewa Indian Tribe of Michigan Distribution of Judgment Funds Act." After further review of our legislative report on this bill dated November 26, 1985, I have determined that our position should be changed.* The Department now favors the approach in S. 1106 as reported by the Committee on Interior and Insular Affairs whereby the funds would be programmed by and for the benefit of the Saginaw Chippewa Indian Tribe of Michigan.

The distribution of funds appropriated to satisfy any judgment of the Indian Claims Commission or United States Claims Court in favor of an Indian tribe is governed by Public Law 93-134 (87 Stat. 466), as amended (25 U.S.C. 1401 et seq.). Through these statutes, Congress acted to encourage tribes to retain as much of the funds from a judgment or claim as possible for "tribal purposes" and in no event less than 20 percent unless the Secretary determines otherwise. Our general policy within the Department is that, insofar as possible, judgment funds should be paid to the modern day tribal organizations that consist of descendants of the aggrieved historical Indian groups.

S. 1106 as reported by the Committee on Interior and Insular Affairs would provide for the distribution of funds appropriated to pay judgments awarded to the Saginaw, Swan Creek and Black River Chippewas in Dockets 59, 13-F and 13-F and the balance of undistributed funds from Docket 57. The bill would require the Secretary of the Interior to transfer these funds to the Saginaw Chippewa Indian Tribe of Michigan for deposit in a trust fund (to be known as the "Investment Fund") established for the benefit of the tribe. Monies derived from the principal of the fund would be available to the Saginaw Tribal Council as fund trustee to be used exclusively for purposes related to tribal economic or natural resource development or for objectives otherwise financially benefical to the tribe.

The actual transfer of monies to the tribal council would be made following adoption of an appropriate council resolution as

*ED. NOTE.—The report dated Nov. 26, 1985, which this report supersedes, will be found in the Committee files.

well as verification that certain amendments to the tribal constitution have been adopted. Upon the completion of the transfer to the tribal council for deposit in the Investment Fund, the Secretary would have no further trust responsibility for the investment, supervision, administration, or expenditure of the principal or income of the fund. The fund would be audited at least once annually by an independent public accounting firm. None of the monies in the fund could be used for per capita payments by the tribal council.

Certain provisions are included in the bill as reported for secretarial intervention, upon notice and hearing, to (1) provide assistance to the tribal council in fund operation; and (2) if necessary, actually assume fund administration for a period up to six months. We interpret this to require secretarial intervention only on the receipt of verified information that the tribal council has materially failed to administer the Investment Fund in accordance with the bill.

S. 1106 contains certain other provisions which, among other things, provide that (1) no payment or distribution of monies from the fund to any enrolled tribal member would be subject to Federal, State or local income tax or be considered as income in determining eligibility under the Social Security Act or other Federal assistance or benefit programs; (2) the tribe may execute limited waivers and consent to State civil jurisdiction with respect to use of the fund as security for certain indebtedness; (3) discrimination in the distribution or expenditure of fund monies is prohibited; and (4) the tribal council may call an election to adopt certain constitutional amendments regarding tribal membership without the approval of the Secretary.

In our November 26, 1985, report, we indicated our opposition to S. 1106 because ". . . (1) it continues to exclude a substantial group of those persons who should be beneficiaries even if the tribe adopts any of the amendments authorized under section 4 of the bill; and (2) the funds in question (including the remaining Docket 57 funds for which the 1977 Secretarial Plan authorized tribal use) would be taken out of trust without adequate justification or protection." We have now determined that the facts do not support, in the situation addressed by S. 1106, such an exception to the general Bureau policy concerning the distribution of judgment funds.

Taking our November 26 arguments in order. First, it is clear that the Saginaw, Swan Creek and Black River Bands of Chippewa Indians (through the "Saginaw Chippewa Indian Tribe of Michigan") are the successors in interest to the historic Michigan Chippewas. A detailed analysis of the three groups is found in the Bureau's Results of Research Report dated October 3, 1983. Certain individuals who are descendants of the historic tribe would be excluded from sharing in the judgment funds distributed under S. 1106.

However, the amendments to the Saginaw tribal constitution referenced in section 4 of the bill will permit inclusion on tribal rolls of many additional descendants of the historic tribe. Through the action of becoming tribal members, such persons will become entitled to all benefits that might be available from the investment of judgment funds by the tribe. We also note with approval that the

bill as reported includes language which precludes any additional amendments of the tribal constitution for 18 months.

It is historically accurate that where tribes consistently decapitalize themselves through per capita payment policies, we see little growth and development in tribal economies. Tribal self-determination and the enhancement of local reservation economies is a stated Federal objective. As noted in the President's American Indian policy statement of January 24, 1983:

> Tribal governments, like state and local governments, are more aware of the needs and desires of their citizens than is the federal government and should, therefore, have the primary responsibility for meeting these needs.

Maintaining judgment funds as a capital pool for individual tribes to invest enhances this stated Administration objective of tribal self-determination and, moreover, reflects the basic intent of Congress as found in 25 U.S.C. 1401 et seq.

Second, we argued in our November 26 letter that the funds in question would be taken out of trust without adequate justification or protection. Upon further review of tribal plans for the use of the monies in question, we find that our earlier concerns are no longer warranted. The present-day tribe has developed comprehensive plans to program the judgment funds for the ongoing benefit of tribal members. Simply because the current tribe may constitute less than some arbitrary percentage of descendants of the historic tribe does not, on due reflection, constitute grounds to oppose S. 1106 as reported.

For the reasons stated above, I have determined that the November 26 exception to our general policy on judgment funds was in error. The Department now favors enactment of S. 1106 as reported by the Committee on Interior and Insular Affairs.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

Ross O. Swimmer,
Assistant Secretary.

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